IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

WP(C).No. 17344 of 2007(M)

PETITIONER:

B.M. HASAINAR,
GENERAL SECRETARY, SHARAFUL ISLAM COMMITTEE,
THEKKUMPURAM, P.O. KEEKAN, (VIA) PALLIKERE,
KASARAGOD DISTRICT.

BY ADV. SRI.IMTHIYAZ AHAMED
SRI.SHIRAZ ABDULLA

RESPONDENTS:
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1. REVENUE DIVISIONAL OFFICER,
OFFICE OF REVENUE DIVISION, KASARAGOD,
KANHANGAD, KASARAGOD DISTRICT.

2. SECRETARY,
PALLIKERE GRAMA PANCHAYATH, PALLIKKERE,
KANHANGAD, KASARAGOD DISTRICT.

3. SECRETARY,
PRANAVAM KALAVEDHY, THEKKEPPURAM KEEKKAN P.O.

BY ADV. SRI.T.MADHU for R2
SRI.K.RAJEEVAN
SMT.SONIYA.M for R3
BY GOVERNMENT PLEADER SRI. SHYSON P.MANGUZHA for R1

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.17344/2007 M

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE PROVISIONAL ORDER DTD. 17/04/2007 ISSUED BY THE 2ND RESPONDENT.

EXT.P2: COPY OF THE ORDER DTD. 10/05/2007 ISSUED BY THE 1ST RESPONDENT.

2ND RESPONDENT'S EXHIBIT:

EXT.R2(A): COPY OF THE MINUTES OF THE ALL PARTY MEETING HELD ON 11/06/2007.

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) No. 17344 OF 2007

Dated this the 18th day of September, 2007

JUDGMENT

The petitioner is the Joint Secretary of Sharaful Islam Committee, stated to be a committee formed with the objective of creating communal harmony spreading the spirit of brother hood in various sections of people and giving financial and social assistance to the poor and needy irrespective of caste, creed or religion. The 1st respondent is the Revenue Divisional Officer, Kasargod. The 2nd respondent is the Secretary of the Pllikare Grama Panchayat and the 3rd respondent is the Secretary of Pranavam Kalavedi.

2. The petitioner claims that the Pallikkare Grama Panchayat an area inhabited by Hindus, Muslims, Christians and people who owe allegiances to other religions is known for its religious and communal harmony. The Panchayat has religious institutions and places of worship belonging to various religions and people take part in the festivals of all these institutions irrespective of their religious allegiances. Petitioner points out that recently due to intervention of certain anti-social elements, peace and tranquility of the area was disturbed and occasionally communal violence also erupted resulting in heavy loss to life and property of people cutting across religious lines. Petitioners

points out that there is a school by name Keekan School in the Panchayat and that the road which leads to that school is a Panchayat road. By the side of that road there are mosques as well as a Mahavishnu temple. This road is very narrow, its width being approximately 10 feet, only making it difficult for two autorikshaws to move at a time. Often there is traffic congestion on this road, several communal clashes erupted in the locality over erection of gates and kamanams by various religious groups. In the wake of those communal clashes, representatives of the various communities in the locality had discussions at the mediation and in the presence of police, District Administration and Panchayat authorities and it was unanimously decided not to erect any gates or kamanams on the road and all were adhering to the unanimous decision taken in that regard. But, in the mid night on 13.4.07, at the instance of the 3rd respondent, a kamanam has been erected on the Keekan school road. This, petitioner submits, was done without the knowledge of the committee of the Mahavishnu temple. The actual purpose behind the erection of the kamanam was to disturb the communal harmony and tranquility in the area. Noticing the construction of the illegal kamanam(arch) and thinking that the kamanam has been erected at the behest of the Sree Mahavishnu

temple, the 2nd respondent issued a provisional order commanding demolition and removal of the kamanam within three days.EXt.P1 is copy of the said order dt.17.04.07.

3. The petitioner submits that the erection of the kamanam in violation of the unanimous decision taken earlier infuriated the local people who tried to remove the same. They were resisted by anti-social elements leading to a very tense atmosphere in the locality. Petitioner claims it was due to timely intervention by persons like him that large scale violence could be averted. The petitioner approached the 1st respondent who rightly issued Ext.P2 directions to the 2nd respondent for removal of the unauthorized kamanam. In spite of Exts.P1 & P2, the unauthorized kamanam is allowed to remain causing hindrance to the traffic and inconvenience to the general public. Complaining of inaction on the part of the 2nd respondent in not implementing Exts.P1 & P2, the petitioner prays in this Writ Petition for a writ of mandamus directing the 2nd respondent to implement Exts.P1 and P2 and thereby facilitate removal of the illegally constructed kamanam.

4. The Panchayat has filed a detailed counter affidavit. It is submitted therein that the kamanam referred to in the Writ Petition is one constructed without obtaining any prior permission from the

Panchayat and that the said kamanam is liable to be removed, as it is an illegal construction. It was therefore that, invoking power under Section 406(2) of the Panchayat Raj Act, provisional order cum show cause notice was issued to the authorities of the Sreemahavishnu Temple, Keekanam, since the kamanam carried the words, “Welcome to Sreemahavishnu Temple” giving an impression that the same was put up by the temple authorities. The temple authorities on receiving Ext.P1 provisional order cum show cause notice, took up the stand that the kamanam was not constructed by them and that they have no liability to demolish or remove the same. The Panchayat points out that when the revenue authorities demanded to demolish the kamanam in enforcement of Ext.P2 order issued by the 1st respondent RDO, there was resistance from among the Hindu community residing in the area. The members of the Muslim community also rushed to the scene supporting the action of the Revenue authorities. It is pointed out that the kamanam has been constructed in a religiously sensitive area which is notorious for communal rights in which lives of many people were lost. In the Panchayat there are many illegal constructions of this nature. Serious law and order situations are likely to arise in the locality which will cause to considerable inconvenience and even loss of lives to

innocent people if this kamanam alone is attempted to be removed. The counter affidavit of the Panchayat submits that the committee of the Panchayat deliberated on the issue and finally an all party meeting was convened on 11.06.07 in the Panchayat conference hall. The meeting was attended by representatives of all major political parties including CPIM, Congress, Muslim League and the BJP. Social activists and even voluntary organisations operating in the area participated in the meeting. The meeting concluded that the law and order situation in the locality is highly inflammable. Though the representatives of almost all the political parties and social activists criticised the construction of the kamanam on the road, from the discussions, it emerged that arches, hundies and such constructions have been made by various temples and mosques in various parts of the Panchayat and that all such illegal constructions will have to be removed. Therefore, the consensus which emerged in the meeting was that the decision to remove this particular kamanam can be kept in abeyance for a short time. It is contended that if the Panchayat attempts on the immediate demolition of the kamanam, the same will have adverse impact. Ext.R2(a) is the copy of the minutes of the all party meeting held on 11.06.07. Therefore, the counter affidavit prays that this Court may not fix a cut off date for demolition of

the kamanam. The counter affidavit assures that Ext.P1 order will be implemented at the appropriate time taking into account the safety and well being of the public at large. The counter affidavit asserts that Ext.P2 order passed by the RDO is one passed without any jurisdiction. Reiterating the averments in the writ petition, the petitioner has filed a reply affidavit.

5. I have heard the submissions of Sri.M.S.Shiraz Abdulla, learned counsel for the petitioner and those of Sri.T.Madhu counsel for the Panchayat apart from the hearing of the submissions of Government Pleader, Mr.Shyson P.Manguzha. Drawing my attention to Ext.R2(a) the learned counsel submitted that the stand of the temple authorities during the all party meeting that it was not they who constructed the kamanam. In that meeting it became clear that, it was the 3rd respondent club which put up the kamanam. Though notice was issued to the 3rd respondent by this Court, they have not entered appearance before this Court. It is not in dispute that the kamanam is an unauthorized construction standing on a Panchayat road. There is no reason as to why Ext.P1 should not be implemented. The apprehensions of communal violence voiced by the Panchayat through their counter affidavit are all unreal. The Panchayat is being soft

towards anti social elements who have unauthorisedly put up a kamanam with the objective of generating communal tension. Mr.Madhu, Standing Counsel for the Panchayat however would submit on the basis of the counter affidavit that any immediate action is likely to inflame communal passions in an area which is even otherwise extra sensitive communally. The learned Government Pleader would practically endorse the submissions of Mr.Madhu regarding the jurisdictional competence of the 1st respondent to pass an order in the nature of Ext.P2. According to him since the petitioner is a party to Ext.R2(a), petitioner is not entitled to invoke the extra ordinary jurisdiction of this Court.

Having considered the rival submissions, I am of the view that the Panchayat is not justified in postponing the implementation of the final order of demolition passed pursuant to Ext.P1 indefinitely. It is almost conceded that the kamanam situated on the Keekanam road put up by the 3rd respondent perhaps with the assistance of the others who are not parties to this Writ Petition is an unauthorized construction liable to be removed, since the same is causing obstruction to the free movement of traffic on the road which is narrow. At the same time it should be noticed that the petitioner himself was a party to Ext.r2(a) minutes. The

ultimate decision which was taken in Ext.R2(a) was that the decision to demolish the kamanam in question will not be implemented immediately, since the implementation of that decision even as similar kamanams, hundies and other offending structures on other roads in the Panchayat are allowed to remain is likely to inflame communal passions in the locality. Setting a short time frame therefore may not be very much in public interest. Under these circumstances, I dispose of the Writ Petition issuing the following directions:

The 2nd respondent Panchayat will immediately identify the objectionable constructions, such as kamanams, hundies and other structures remaining over the various Panchayat roads within its area and initiate action for removal of those objectionable structures within six weeks of receiving copy of this judgment. Within the same period the Panchayat will take action for removal of the kamanam which is the subject matter of this Writ Petition. Notice in that regard will be issued to the 3rd respondent and also to the authorities of Sreemahavishnu Temple, Keekanam. It is open to the Mahavishnu temple to inform the Panchayat as to who apart from the 3rd respondent is to be given notice regarding the removal of the kamanam. On receiving such information, the Panchayat will issue notice to those persons also. The Panchayat

will finalise the proceedings for removal of the unauthorized kamanam which is the subject matter of this Writ Petition at the earliest and at any rate within three months of receiving copy of this judgment. It is needless to mention that the proceedings which the Panchayat initiates for removal of the unauthorized structures situated on other Panchayat Roads will also be finalised by the Panchayat at its earliest.

PIUS C. KURIAKOSE, JUDGE

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